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APPLICATION OF

THE CITY OF BRISTOL

CASE NO. PUC-2002-00126

**For a certificate of public convenience
and necessity to provide local exchange
telecommunications services and for
interim operating authority**

HEARING EXAMINER'S PROTECTIVE RULING

October 1, 2002

On September 27th, 2002, City of Bristol, d/b/a Bristol Virginia Utilities Board ("BVUB"), by counsel, filed a motion requesting the entry of a Protective Order setting forth the procedures by which "confidential information," as well as information that may require an enhanced level of protection from disclosure to competitors, shall be handled generally in this proceeding.

By Order entered on September 27, 2002, pursuant to Rule 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, the Commission appointed a Hearing Examiner to this case for the purpose of ruling on any discovery matters that may arise in the proceeding.

Good cause having been shown, I find that BVUB's Motion for Protective Order should be, and it is hereby, granted. Accordingly,

IT IS DIRECTED that any information, materials, studies, and documents to be produced by BVUB in response to Commission orders, rulings, Commission Staff ("Staff") data requests, or properly propounded interrogatories or requests for production of documents (collectively referred to as "discovery") from parties in this proceeding to BVUB, which documents, materials, studies, or information BVUB designates as confidential or as information containing trade secrets, privileged or confidential commercial or financial information (referred to collectively herein as "confidential information") shall be filed, produced, examined, and used only in accordance with the conditions set forth in this Ruling. Notwithstanding the foregoing, information that is generally available to the public from any other means shall not be granted confidential information status and shall not be designated as confidential information by BVUB. Information shall be considered generally available to the public: (a) when the information is publicly known at the time of disclosure; (b) when the information becomes public knowledge without violation of this Protective Ruling; (c) when the information is obtained from a third person not affiliated with this case who received such information without restrictions; (d) when the information is independently developed by a person without access to the confidential information; and (e) when the information is required to be disclosed by law.

(1) As regards information which may otherwise be required to be filed or produced by BVUB as a response to properly propounded discovery, BVUB shall (i) clearly mark such information as confidential before disseminating the information to anyone in the proceeding, and (ii) if the information is required to be filed with the Commission it should be filed under seal with BVUB simultaneously filing with the Commission a redacted version for public viewing of all such documents containing the confidential information.

(2) When BVUB files with the Commission or produces any confidential information to any party, such confidential information shall be used only by that party for the purpose of this proceeding, which shall include any appeals emanating from this proceeding.

(3) When BVUB provides confidential information pursuant to this Protective Ruling, access to such information shall be specifically limited to Commission Staff and any party, their respective counsel and expert witnesses, and to appropriate support personnel working on this proceeding under the supervision of counsel or the expert witness and to whom it is necessary that the confidential information be shown for purposes of this proceeding, but only so long as each such person to be shown the confidential information has executed an Agreement to Adhere to Protective Ruling ("Agreement"), which is appended as Attachment A to this Protective Ruling. Though Staff and Staff counsel are not required to execute such Agreement, they are directed to preserve the confidentiality of the confidential information. Once executed, all Agreements shall be promptly forwarded to BVUB.

(4) Commission Staff or any other party may object to BVUB's confidential designation of particular information by filing an appropriate motion with the Commission. In the event of such a motion being filed in this proceeding, the Commission will conduct an *in camera* review of the challenged BVUB information, materials, studies, or documents. BVUB shall bear the burden of proving that the information, materials, studies, or documents should be designated as confidential information. In no event shall any party disclose the confidential information it has received subject to this Ruling, absent a finding by the Commission that such information does not require confidential information treatment.

(5) Within five (5) business days of the filing of such a motion, BVUB shall file a reply setting forth why confidential information treatment should apply and within five (5) business days of the filing of BVUB's reply, the party which objected to the confidential treatment may file a response.

BVUB's reply shall respond to each and every item that is being identified in the motion for confidential treatment status with a log that specifies the following information being withheld: (a) if in response to properly propounded discovery, the number of the request and the date of the request; (b) the type of information for which confidential treatment is being requested; namely, is it information which is: stored electronically, in a letter, in a memorandum, in a policy circular, in a report, in a minute

book, on a telegram, or on a chart, and the like; in the alternative, provide some other means for identification; (c) where the information is located and who is the custodian of the information; and (d) describe the nature of the information.

(6) BVUB shall be under no obligation to furnish confidential information to anyone other than those authorized under paragraph three (3) of this Ruling unless the Commission specifically orders BVUB to do so. The Commission encourages parties to seek consents to the maximum extent practicable.

(7) The Clerk of the Commission is hereby directed to maintain under seal all information, materials and documents filed with the Commission in this proceeding which BVUB has designated as confidential information, until further order of the Commission.

(8) BVUB shall be obligated to separate to the fullest extent practicable non-confidential discovery responses from confidential discovery responses and to provide the non-confidential discovery responses without restriction.

(9) Should BVUB contend that it should not produce certain items of information because the terms of this Ruling do not afford sufficient protection to prevent harm to BVUB, BVUB may file a motion with the Commission seeking additional protective treatment and BVUB bears the burden of demonstrating to the Commission's satisfaction that this Ruling does not provide the information sufficient protection and that the proposed additional protective treatment is necessary. Within five (5) business days of the filing of such motion by BVUB, Staff and any other party may file a reply to the motion. Within five (5) business days of the filing of any reply by Staff or other party, BVUB may file a response.

(10) In the event that there is a hearing on this application and Staff or any party seeks to introduce at such hearing testimony, exhibits or studies that disclose confidential information, Staff or the party seeking such introduction shall: (a) notify BVUB at least ten (10) business days in advance of any such hearing, unless a reduced time period would not unduly prejudice BVUB or is necessitated by the circumstances; and (b) if such testimony is prefiled, BVUB shall file any testimony, exhibits, or studies with the Commission but under seal, and simultaneously file a redacted version of the testimony, exhibits, or studies with the Commission. BVUB shall also serve on all parties of record the redacted copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated confidential information. The Commission shall maintain such testimony, exhibits, or studies containing the confidential information under seal unless and until the Commission rules to the contrary. Each party that has signed an Agreement To Adhere To Protective Ruling shall receive an unredacted copy of the testimony, exhibits, or studies that contain references to or portion of the confidential information.

(11) Any oral testimony taken during a hearing in this matter regarding confidential information, upon a ruling by the Commission that it is admissible by the Commission, shall

be taken *in camera* and that portion of the transcript recording such testimony shall be placed in the record under seal.

(12) Any person who is authorized under this Ruling to have access to confidential information shall not disseminate, communicate, or reveal any such confidential information to any person not specifically authorized under this Ruling or subsequent order or ruling by the Commission to have access.

(13) Upon the conclusion of this proceeding (including any appeals), any originals or reproductions of any confidential information produced pursuant to this Ruling shall be returned by the parties to BVUB or destroyed if requested to do so by BVUB. At such time, any originals or reproductions of any confidential information in Commission Staff's possession will be returned to BVUB, destroyed, or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the confidential information. Insofar as the provisions of this Protective Ruling restrict the communications and use of the confidential information produced hereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the confidential information.

(14) Any party who obtains confidential information from BVUB and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities that might attach from such misuse.

(15) BVUB shall within three (3) business days after the receipt of an Agreement to Adhere to Protective Ruling supply such requesting party with the information it had heretofore refused to provide in the absence of this Protective Ruling.

Michael D. Thomas
Hearing Examiner

ATTACHMENT A

APPLICATION OF

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AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing _____
_____, hereby acknowledge having read and understood the
terms of the Protective Ruling entered in this proceeding by the Hearing Examiner on
October 1, 2002, and agree to treat all confidential information that I receive, review, or
which I have access in connection with Case Number PUC-2002-00126, as set forth in that
Protective Ruling.

Signature: _____

Printed Name: _____

On behalf of: _____

Date: _____